Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

MARGARET KELLY MICHAELS,

Petitioner,

v.

GEORGE McGRATH, RICHARD MASTROANGELO, SARA SENCER-McARDLE, LOUIS FONNELARAS, AND SUSAN ESQUILIN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

CHARLES F. KENNY
Counsel of Record

LOUIS J. SANTORE

SANTORE & KENNY
300 Harmon Meadow Blvd.
Secaucus, New Jersey 07094
(201) 319-8888

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Does an individual have constitutionally protected rights, which are violated when improperly obtained statements of third parties, that constitute the sole basis of criminal charges, are used against her to secure indictments, arrest, pre-trial confinement, trial and post trial incarceration?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioner, Margaret Kelly Michaels, states she is a private individual with no affiliation to a corporation, parent company or subsidiary.

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PETITION FOR WRIT OF CERTIORARI

Margaret Kelly Michaels ("Michaels" or "Plaintiff") respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on June 5, 2000, in order to resolve the conflict between the majority of the Seventh Circuit's Opinion in *Buckley v. Fitzsimmons*, 20 F.3d 789 (7th Cir. 1994), *cert. denied*, 513 U.S. 1085, 115 S.Ct. 740, 130 L. Ed. 2d 642 (1995) and the dissenting opinion regarding the issue as to whether a criminal defendant has constitutionally protected rights which are violated when improper interrogation techniques are used against third persons, as the sole basis for the indictment, pre-trial confinement and conviction of a criminal defendant.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit that gives rise to this petition may be found reprinted in Appendix A hereto (App. A 1a-13a). By order filed June 5, 2000, the Court of Appeals affirmed the judgment of the district court entered May 26, 1999. The opinion of the district court has been published and may be found at *Michaels v. State of New Jersey, et al.*, 50 F. Supp. 2d 353 (D.N.J. 1999).

The underlying criminal matter which gave rise to the federal civil rights action has generated two published state court opinions:

State v. Michaels, 264 N.J. Super. 579 (App. Div. 1993) and *State v. Michaels*, 136 N.J. 299 (1994).

BASIS FOR JURISDICTION

On May 26, 1999, the district court entered an order dismissing the federal causes of action against the defendants. Michaels timely appealed to the Third Circuit, which affirmed the opinion filed on June 5, 2000. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the Third Circuit's Order.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTE INVOLVED IN THIS CASE

42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This litigation arises out of the wrongful indictment, arrest, pre-trial incarceration, conviction, and subsequent incarceration of the petitioner Margaret Kelly Michaels ("Michaels" or "Plaintiff").

FACTUAL BACKGROUND

The factual backdrop and procedural history of this matter have been set forth in detail in *State v. Michaels*, 264 N.J. Super. 579 (App. Div. 1993) and in *State v. Michaels*, 136 N.J. 299 (1994) as well as the United States District Court's decision, *Michaels v. State of New Jersey, et al.*, 50 F. Supp. 2d 353 (D.N.J. 1999).

Immediately upon being charged in an initial indictment alleging child sexual abuse, Michaels was arrested and incarcerated in the county jail. Bail was set at that time. However, given the amount of the bail, Michaels was unable to obtain her release until approximately 2 months later. Thereafter, two additional indictments were issued. Then, in December 1985, Michaels' bail was revoked and she was readmitted to county jail where she remained incarcerated for over one month until bail was reinstated.

Subsequent to trial, Michaels spent five years in prison as a result of being convicted of numerous counts

of child sexual abuse. After serving five years in prison, more than one of which was in solitary confinement, the New Jersey appellate court reversed her conviction. *State v. Michaels*, 264 N.J. at 645. That reversal was appealed by the State to the New Jersey Supreme Court, which affirmed the reversal of the conviction. See *State v. Michaels*, 136 N.J. at 324.

By way of background, in September 1984, Michaels, then 22 years old, was hired as a teacher's aid for pre-schoolers.

During a routine pediatric examination, a four-year-old child in Michaels' class made a statement which was misconstrued and initiated the allegations of sexual abuse against Michaels. See *State v. Michaels*, 136 N.J. at 304.

Thereafter, an initial investigation spearheaded by the Essex County Prosecutor's office resulted in several indictments and ultimately, after a nine month, highly publicized trial, a conviction. The investigating individuals, prosecutors, and the investigative techniques they employed were highly criticized by both the appellate court and Supreme Court of the State of New Jersey. The New Jersey Supreme Court held that "interrogations that occurred in this case were improper and there is substantial likelihood that the evidence derived from them is unreliable." *State v. Michaels*, 136 N.J. 299, 324 (1994). The appellate court concluded that the interrogations that had been conducted were "highly improper." *State v. Michaels*, 264 N.J. Super. at 629.

Further, the New Jersey Supreme Court found that "many of the interviews demonstrated ineptness in dealing with the challenges presented by pre-schoolers, and

displayed their frustration with the children." *Id.* at 313-314. As a result of the New Jersey state courts' opinions, the Essex County Prosecutor then issued a dismissal on December 1, 1994, in effect dropping all of the charges against Michaels. (App. 6a).

42 U.S.C. §1983 CIVIL CASE

On June 13, 1996, Michaels filed a Complaint in the Superior Court of New Jersey against numerous Defendants alleging various causes of action, including malicious prosecution and civil rights violations sounding in common law as well as 42 U.S.C. §1983 causes of action. Thereafter, the Defendants removed this matter to the Federal District Court of New Jersey. (App. 6a-7a).

Subsequently, numerous counts and defendants were dismissed by consent of the Plaintiff or by order. (App. 7a). Two causes of action remained, namely, malicious prosecution and §1983 causes of action. The remaining defendants; Sarah Sencer-McArdle, an Essex County Prosecutor; Louis Fonolleras, an investigator for the State agency, Division of Youth and Family Services; George McGrath, an Essex County Investigator; Richard Mastrangelo, an Essex County Investigator; and Dr. Susan Esquilin, a psychologist hired to participate in the investigation by the Essex County Prosecutors Office, all moved before the district court to establish immunities and for summary judgment on the federal malicious prosecution causes of action. (App. 7a).

On May 26, 1999, the Honorable Maryanne Trump Barry, U.S.D.J. issued an order granting defendants'

motion for summary judgment and remanding the common law malicious prosecution claim to the Superior Court of New Jersey. An opinion was filed on May 26, 1999 and subsequently published. See *Michaels v. State of New Jersey*, 50 F. Supp. 2d 353 (D.N.J. 1999). (App 7a).

Plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit on June 21, 1999. (App. 7a). Thereafter, the United States Court of Appeals for the Third Circuit issued a judgment on June 5, 2000, affirming the judgment of the district court. The court issued an opinion also on June 5, 2000, finding that

> The district court did not err in concluding that Michaels did not demonstrate a violation of her constitutional rights when the defendants employed improper interview techniques with the children. Thus, all of the defendants are entitled to qualified immunity for those acts. Furthermore, Ms. Sencer-McArdle is entitled to absolute immunity for offering the testimony of the children against Michaels before the grand jury in that trial. (App. 12a)

Plaintiff now prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals.

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS' DECISION LEAVES AN ENTIRE CLASS OF CRIMINAL DEFENDANTS WITHOUT THE BENEFIT OF §1983 REDRESS BY FINDING THAT CONSTITUTIONALLY PROTECTED RIGHTS DO NOT EXIST WHEN IMPROPERLY OBTAINED STATEMENTS OF THIRD PARTIES ARE USED AGAINST THEM IN A CRIMINAL PROSECUTION

The Court of Appeals' decision is based on the district court's decision which leaves an entire class of criminal defendants without the benefit of §1983 redress by finding that constitutionally protected rights do not exist when improperly obtained statements of third parties are used against them in a criminal prosecution. The Seventh Circuit's majority opinion in *Buckley v. Fitzsimmons*, 20 F.3d 789 (7th Cir. 1994) *cert. denied*, 513 U.S. 1085, 115 S.Ct. 740, 130 L. Ed. 2d 642 (1995) directly conflicts with the dissenting opinion regarding the existence of a criminal defendants' rights and is inconsistent with the broad scope of the intended civil remedies for a criminal defendant pursuant to 42 U.S.C. §1983. Further, the majority opinion in *Buckley* is inconsistent with the Tenth Circuit's opinion in *Clanton v. Cooper*, 129 F.3d 1147 (10th Cir. 1997). Finally, the Third Circuit attempted to distinguish this matter from the *Clanton* matter, but relied on an erroneous impression that evidence, other than the statements arising out of the improper interrogations, existed to support the criminal investigation and prosecution of Michaels.

The decision below requires review as it relies on the majority holding of the Seventh Circuit's opinion in *Buckley v. Fitzsimmons* which also contains a dissenting opinion completely contrary to the majority as to whether a criminal defendant's rights are violated when improper interrogation methods are employed against third persons to implicate the defendant. The dissenting opinion held that if a Plaintiff can demonstrate that the indictment and trial would not have occurred, but for, the wrongful conduct which occurred during the investigation stage, the prosecution should not be immune for their non-advocacy wrongful conduct. *Buckley*, 20 F.3d at 800, (Fairchild, J., dissenting). Here, Michaels was indicted, suffered pre-trial incarceration and more than five years of post-trial incarceration, solely based on wrongful conduct which occurred during the investigation stage.

The Third Circuit affirmed the district court's opinion that the defendants were entitled to qualified immunity because the interview techniques they employed did not violate Michaels' constitutional right to due process under the Fourteenth Amendment. (App. 12a). The rationale of the district court, which was affirmed by the Third Circuit, was adopted from the Seventh Circuit's holding in *Buckley v. Fitzsimmons*. The Court in *Buckley* held that coercion of witnesses in a criminal investigation is a constitutional wrong that violates the rights of the person being interrogated. However, according to *Buckley* the rights of the criminal defendant are not implicated until those coerced statements are used at trial. In *Buckley*, the Court held that using those statements at the criminal defendant's trial violates the defendant's rights under the

Due Process Clause, but at that time, the prosecutors are entitled to absolute immunity for their actions. The dissent in *Buckley* suggested that prosecutors should not be immune from liability for their role in the investigation stage, if the plaintiff can show that the indictment and trial would not have occurred, but for the wrongful conduct employed in the investigation. *Buckley*, 20 F.3d at 800 (Fairchild, J., dissenting).

Further, the Tenth Circuit's opinion in *Clanton v. Cooper*, 129 F.3d 1147 (10th Cir. 1997) held that the Plaintiff had standing to assert a constitutional violation of his rights based upon a witness' coerced confession. Accordingly, the Court in *Clanton* held that a criminal defendant has standing to challenge the government's use of a coerced confession given by a third person against the criminal defendant. The finding of the Third Circuit, here, is inconsistent with *Clanton*.

The Third Circuit's opinion in this matter attempted to distinguish *Buckley* and *Clanton* by citing the *particular use* of the improperly obtained statements. The Third Circuit noted that the witness' coerced statements were only used at trial in *Buckley*. There, the Court held that the prosecutor was absolutely immune from action for damages under §1983. In *Clanton*, the police used the third persons' coerced statement in an affidavit to support an arrest warrant for the defendant. The Court in *Clanton* held that using an improper statement in that context, renders the officers without entitlement of qualified immunity.

However, this distinction is without basis here. The Third Circuit states, "the only use of the improperly

obtained statements against Michaels was the presentation of the children's testimony before the grand jury and at the criminal trial." (App. 9a). The Court further found that "[u]ntil the children testified against her, Michaels's constitutional right to due process was not violated by the techniques used to interview the children." (App. 11a-12a). However, although the erroneous finding by the Third Circuit is not the sole basis of our argument, we are compelled to point out that the improperly obtained statements were not only used before the grand jury and at the trial; they were used as the *sole support* for the entire criminal investigation and relied upon to secure the indictment, arrest and pre-trial incarceration of Michaels. Therefore, pursuant to the mandate of *Clanton*, neither the investigators nor the prosecutors should be immune from liability for their role in obtaining the improper statements.

Further, even if the Third Circuit's finding that Michaels' rights were only implicated during the trial is accurate as the dissent in *Buckley* suggested, the defendant prosecutor should not be immune from liability for her non-advocacy wrongful conduct during the investigation stage as Michaels can demonstrate that the indictment and trial would not have occurred "but for the wrongful conduct of defendant." See *Buckley*, 20 F.3d at 800 (Fairchild, J., dissenting).

In addition, the majority opinion in *Buckley* is flawed because it leaves a Plaintiff in a §1983 action, such as this, without civil recourse. Here, the Third Circuit recognized the correctness of Plaintiff's argument. (App. 9a). However, the Third Circuit relied upon the justification that the "policies served by granting absolute prosecutorial

immunity outweighed any gap in the plaintiff's recovery." (App. 9a), citing *Imbler*, 424 U.S. at 427. The court indicated that the falsely charged defendant was remedied by various "safeguards built into the judicial system – probable cause hearings, dismissal of charges – and into state codes of professional responsibility." (App. 10a), quoting *Kulwicki v. Dawson*, 969 F.2d 1454 (3d Cir. 1992).

However, such safeguards built into the judicial system only protect the continued wrongful incarceration of an improperly convicted defendant. 42 U.S.C. §1983 provides civil remedies for such improperly convicted defendants. This Court has held that the coverage of §1983 must be broadly construed. See *Dennis v. Higgins*, 496 U.S. 439, 111 S.Ct. 865, 112 L. Ed. 2d 969 (1991). Further, the Ninth Circuit Court of Appeals has held that §1983 was designed as a comprehensive remedial legislation for the deprivation of federal, constitutional and statutory rights. *Green v. Dumke*, 480 F.2d 624 (9th Cir. 1973). Finally, the Second Circuit Court of Appeals held that §1983 should be interpreted with sufficient liberality to fulfill its purpose of providing federal remedy in protection of a federal right. *Birnbaum v. Trussell*, 371 F.2d 672, (2d Cir. 1988).

Accordingly, the Third Circuit's conclusion that plaintiff had redress because her conviction was dismissed is inconsistent with the intent of 42 U.S.C. §1983 action. It also leaves a whole class of wrongfully accused defendants without civil recourse; which is also contrary to the intent of §1983.

Finally, this case should be reviewed, as the Third Circuit's opinion is inconsistent with the mandate of

§1983 action, by improperly stating that Michaels had no constitutional right to protect and is egregiously factually flawed, by stating the only use of the improper statements were at trial.

CONCLUSION

For the foregoing reasons, Petitioner respectfully urges this Court to grant the writ and to review the Judgment and Opinion of the Court of Appeals for the Third Circuit.

Respectfully Submitted,

CHARLES F. KENNY
Counsel of Record

LOUIS J. SANTORE

SANTORE & KENNY
300 Harmon Meadow Blvd.
Secaucus, New Jersey 07094
(201) 319-8888

Counsel for Petitioner

Filed June 5, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-5486

MARGARET KELLY MICHAELS

v.

STATE OF NEW JERSEY; ATTORNEY GENERAL'S OFFICE; COUNTY OF ESSEX; ESSEX COUNTY PROSECUTOR; GEORGE L. SCHNEIDER, ESQ.; HERBERT TATE, ESQ.; JOHN MASTROANGELO; JOHN NOONAN; GLENN GOLDBERG, ESQ.; SARAH SPENCER-MCARDLE; EILEEN C. TREACY, M.A.; THE ESSEX COUNTY POLICE DEPARTMENT; NEWARK POLICE DEPARTMENT; DIVISION OF YOUTH AND FAMILY SERVICES; LOUIS FONNELARAS; SUSAN ESQUILLAN; "JOHN DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "JOSEPH DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "JAMES DOES"; "JANE DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "HARRY DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); GEORGE MCGRATH

SUSAN ESQUILLAN

Defendant/Third-Party Plaintiff

v.

THE HEALTH CARE INSURANCE COMPANY

Third-Party Defendant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 96-03557)
District Judge: Honorable Maryanne Trump Barry

Argued: March 21, 2000

Before: MANSMANN and GREENBERG, *Circuit Judges*
and ALARCON, Senior Circuit Judge*

(Filed: June 5, 2000)

Louis J. Santore [Argued]
Santore & Kenny
300 Harmon Meadow Boulevard
Secaucus, NJ 07094

Attorney for Appellant

Juan C. Fernandez
Essex County Counsel

Steven C. Mannion [Argued]
Assistant County Counsel
County of Essex
Hall of Records, Room 530
Newark, NJ 07102

Attorneys for Appellees
George McGrath and
Richard Mastroangelo

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* The Honorable Arthur L. Alarcon, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

Jacqueline A. DeGregorio
[Argued]
Robert D. Laurino
Weiner Lesniak
629 Parsippany Road
Parsippany, NJ 07054-0438

Attorneys for Sara Sencer-McArdie

John J. Farmer, Jr.
Attorney General of New Jersey
Mary C. Jacobson
Assistant Attorney General
of Counsel

Valerie L. Egar [Argued]
Deputy Attorney General
Office of Attorney General of
New Jersey
Department of Law &
Public Safety
Division of Law
Richard J. Hughes Justice
Complex
Trenton, NJ 08625

Attorneys for Louis Fonnelaras

Terri A. Smith [Argued]
Stevens & Minter
300 Lighting Way
2nd Floor
Secaucus, NJ 07096

Attorney for Susan Esquilin

OPINION OF THE COURT

ALARCON, *Senior Circuit Judge*.

Margaret Kelly Michaels ("Michaels") appeals from the order granting the defendants' motion for summary judgment and dismissing her § 1983 claims against them. Michaels alleged that the defendants violated her constitutional rights by employing coercive interview techniques with child witnesses while investigating allegations of child abuse made against her. The district court granted the defendants' motions for summary judgment on three alternative grounds. First, the district court found that the defendants were entitled to qualified immunity because Michaels's allegations that the defendants engaged in an improper investigation did not allege a violation of her constitutional rights. The district court then ruled that even if the improper investigation did violate her constitutional rights, the defendants would nonetheless be entitled to qualified immunity because those rights were not clearly established at the time of the investigation such that a reasonable person in the defendants' position would have known that they were violating her rights. Finally, the district court concluded that, putting the issue of qualified immunity aside, Michaels's § 1983 malicious prosecution claim must be dismissed for failure to state a claim. Michaels contends that each one of the district court's conclusions was erroneous. We agree with the district court that the use of improper interview techniques in questioning the children did not violate any of Michaels's constitutional

rights. We conclude that the district court correctly determined that Michaels failed to demonstrate that her constitutional rights were violated. We do not consider its alternative grounds for granting summary judgment.

I

A child who attended the Wee Care Nursery School in Maplewood, New Jersey, reported to a nurse at his pediatrician's office that he had been sexually abused by Michaels. Michaels was employed at the nursery school as a teacher. On April 30, 1985, Louis Fonnelaras, an investigator with the Institutional Abuse Investigation Unit of the Division of Youth and Family Services, was assigned to investigate the merits of the child's allegation. Mr. Fonnelaras informed John Mastroangelo, an investigator with the Essex County Prosecutor's Office, of the child's accusation. Mr. Mastroangelo notified Sarah Sencer-McArdle, the director of the Child Abuse Unit of the Prosecutor's Office, of the sexual abuse report. Shortly thereafter, four other children made similar allegations regarding Michaels's conduct. Ms. Sencer-McArdle interviewed each of the children. The evidence she discovered induced a grand jury to return an indictment against Michaels.

Following the return of the first indictment, other children reported additional allegations of sexual misconduct by Michaels at the nursery school. After interviewing the children, Ms. Sencer-McArdle presented the results of her investigation to a second grand jury. The Essex County Prosecutor's Office continued to receive reports of sexual misconduct committed against children

at the Wee Care Nursery School. Ms. Sencer-McArdle presented this evidence to a third grand jury after conducting additional interviews. During the course of these investigations, Mr. Mastroangelo and George McGrath, another investigator with the Essex County Prosecutor's Office, Susan Esquilin, a psychologist, and Mr. Fonnelaras also participated in questioning the children. A total of one hundred and sixty-three charges were filed against Michaels in three separate indictments.

On June 22, 1987, the trial regarding these charges was commenced in the Superior Court of New Jersey. On April 15, 1988, the jury convicted Michaels of 115 counts of aggravated assault, sexual assault, endangering the welfare of children, and terroristic threats. On March 26, 1993, the Appellate Division reversed the convictions and remanded for a new trial. The court questioned the reliability of the methods used to interview the children. The court held that, "courts must provide a remedy where the record demonstrates that an accuser's testimony is founded upon unreliable perceptions, or memory caused by improper investigative procedures if it results in a defendant's right to a fair trial being irretrievably lost. . . . [and that a] factual hearing would be required for this purpose." *See State v. Michaels*, 264 N.J. Super. 579, 631-32 (App. Div. 1993). The Supreme Court of New Jersey affirmed the reversal of the judgment of conviction. *See State v. Michaels*, 136 N.J. 299 (1994). On December 1, 1994, the Essex County Prosecutor's Office dismissed all charges against Michaels.

On June 13, 1996, Michaels filed a complaint in the Superior Court of New Jersey. On July 25, 1996, the

defendants removed the action to the United States District Court, District of New Jersey. Numerous claims and defendants were dismissed, either voluntarily or by court order, leaving only the claims of malicious prosecution and violation of § 1983 against five defendants: Louis Fonnelaras, John Mastroangelo, Sarah Sencer-McArdle, George McGrath, and Susan Esquilin (collectively "the defendants"). The defendants filed motions for summary judgment based on the defense of qualified immunity. In May, 26, 1999, the district court granted the motions and dismissed the § 1983 claims. The district court remanded the common law malicious prosecution claim to the Superior Court of New Jersey. Michaels timely filed this appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291.

II

We review a district court's grant of a motion for summary judgment de novo. *See Bartnicki v. Vopper*, 200 F.3d 109, 114 (3d Cir. 1999). Summary judgment is appropriate where, viewing the record in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Jones v. School Dist. of Philadelphia*, 198 F.3d 403, 409 (3d Cir. 1999).

In analyzing whether a defendant is entitled to the dismissal of an action based on the defense of qualified immunity, we must first determine "whether the plaintiff's claims make out a violation of a constitutional right." *Assaf v. Fields*, 178 F.3d 170, 174 (3d Cir. 1999) (citing *Siegert v. Gilley*, 500 U.S. 226, 231 (1991)). If we conclude that the plaintiff has alleged a violation of a

constitutional right, we must then determine whether the defendant violated a clearly established right such that a reasonable official in the defendant's position would know that his conduct was unlawful. *See id.; see also Sharrar v. Felsing*, 128 F.3d 810, 826 (3d Cir. 1997) ("Government officials performing discretionary functions are 'shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' ") (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). These inquiries are questions of law that the court must resolve. *See Sharrar*, 128 F.3d at 828.

Michaels contends that the district court erred in concluding that the defendants were entitled to qualified immunity because the interview techniques they employed did not violate her constitutional right to due process under the Fourteenth Amendment. Michaels argues that the rationale of the district court, adopted from the Seventh Circuit's holding in *Buckley v. Fitzsimmons*, 20 F.3d 789 (7th Cir. 1994), is flawed because it "leaves a Section 1983 Plaintiff, such as Michaels, without recourse."

In *Buckley*, the plaintiff brought § 1983 claims against police officers for allegedly coercing witnesses, and paying them money to make false statements against him, in order to implicate him in the crime for which he was tried. *Id.* at 794. The court held in *Buckley* that "[c]oercing witnesses to speak . . . is a genuine constitutional wrong" that violates "the right of the person being interrogated to be free from coercion." *Id.* The court further held, however, that the plaintiff could not "complain that the prosecutors may have twisted [the witness's] arm"

because "[r]ights personal to their holders may not be enforced by third parties." *Id.* at 794-95 (citations omitted). The court in *Buckley* ruled that "using one person's coerced confession at another's trial violates his rights under the due process clause," but that "[p]rosecutors are entitled to absolute immunity for actions as advocates before the grand jury and at trial even if they present unreliable or wholly fictitious proofs." *Id.* at 795; *see also Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (holding that a prosecutor is entitled to absolute immunity from a civil suit for damages under § 1983 in initiating a prosecution and in presenting the state's case, including deciding which evidence to present).

Consistent with the analysis of the Seventh Circuit in *Buckley*, the district court in this matter held that the techniques used to interview the children during the course of the investigation did not violate Michaels's constitutional rights. The district court decided that Ms. Sencer-McArdle was entitled to absolute immunity in offering the unreliable evidence.

Michaels is correct in noting that such a rule leaves a plaintiff like herself without recourse. Indeed, the court in *Buckley* recognized this dilemma. 20 F.3d at 795 ("[T]he only way Buckley can establish a violation of the Constitution is to plead himself out of court."). The United States Supreme Court, in upholding absolute prosecutorial immunity, also noted that absolute prosecutorial immunity may "leave the genuinely wronged defendant without civil redress," but concluded that the policies served by granting absolute prosecutorial immunity outweighed any gap in a plaintiff's recovery. *See Imbler*, 424 U.S. at 427. This court has acknowledged that a person

harmed by the actions of a prosecutor would not be without any redress, because "[h]arm to a falsely-charged defendant is remedied by safeguards built into the judicial system – probable cause hearings, dismissal of the charges – and into the state codes of professional responsibility." *Kulwicki v. Dawson*, 969 F.2d 1454, 1464 (3d Cir. 1992).

Michaels suggests that a but for causation analysis would be more appropriate to resolving the issue of qualified immunity in this instance. To support this proposition, Michaels cites to the dissenting opinion in *Buckley*. The dissent in *Buckley* suggested that prosecutors are not immune from liability for their non-advocacy wrongful conduct if the plaintiff can demonstrate that the indictment and trial would not have occurred but for the wrongful conduct. 20 F.3d at 800 (Fairchild, J., dissenting). Judge Fairchild reasoned that the investigation techniques employed by the officers in *Buckley* were the same as manufacturing evidence and suborning perjury, actions that would be non-advocacy wrongful conduct. *See id.*

We are persuaded by the reasoning set forth in the majority opinion of *Buckley*. While we recognize that this rule may seem harsh to plaintiffs, we are satisfied that the remedies set forth in *Kulwicki* for a falsely-charged defendant are sufficient to discourage prosecutors from coercing witnesses to make unreliable statements against a defendant. Here, for example, Michaels's conviction was reversed and the serious charges against her were dismissed because the children's testimony was unreliable.

Michaels also attempts to support her argument that her constitutional rights were violated by the improper techniques used to interview the children by relying on the decision in *Clanton v. Cooper*, 129 F.3d 1147 (10th Cir. 1997). Michaels asserts that the court in *Clanton* held that the plaintiff had standing to assert a constitutional violation of his rights based upon a witness's coerced confession. Citing *Buckley*, the court in *Clanton* held that "a person may challenge the government's **use against him or her** of a coerced confession given by another person." *Id.* at 1157-58 (emphasis added). It recognized a plaintiff's constitutional right not to have another person's coerced statement used against him in an affidavit for an arrest warrant. *See id.*

The distinction between *Buckley* and *Clanton* is the use of the improperly obtained statements. In *Buckley*, the witness's coerced testimony was presented at trial. The court held that the prosecutor was absolutely immune from an action for damages under § 1983 under Imbler. *See* 20 F.3d at 795. In *Clanton*, on the other hand, the police used another person's coerced confession in an affidavit to obtain an arrest warrant for *Clanton*. 129 F.3d at 1151. In using a coerced statement in this manner, the court held in *Clanton* that the officers were not entitled to qualified immunity. *See id.* at 1159; *see also Malley v. Briggs*, 475 U.S. 335, 343 (1986) (holding that an officer applying for a warrant without probable cause may be entitled to qualified immunity but is not entitled to absolute immunity). Here, the only use of the improperly obtained statements against Michaels was the presentation of the children's testimony before the grand jury and at the criminal trial. Until the children testified against

her, Michaels's constitutional right to due process was not violated by the techniques used to interview the children.

The district court did not err in concluding that Michaels did not demonstrate a violation of her constitutional rights when the defendants employed improper interview techniques with the children. Thus, all of the defendants are entitled to qualified immunity for those acts. Furthermore, Ms. Sencer-McArdle is entitled to absolute immunity for offering the testimony of the children against Michaels before the grand jury in that trial.

III

Michaels also contends that she was denied the opportunity to discover evidence as to the proper interview techniques for interviewing children regarding allegations of sexual abuse in order to demonstrate that the defendants violated her clearly established constitutional rights. Because we conclude that the *questioning* of the children did not violate *Michaels's* constitutional rights, we need not consider this question. Furthermore, Michaels's final contention, that the district court erred in dismissing her malicious prosecution § 1983 claim for failure to state a claim, is also unavailing. The district court properly dismissed her claims on the basis that the remaining defendants were entitled to immunity. Any discussion in the district court's order as to whether Michaels stated a § 1983 malicious prosecution claim was superfluous. The order granting summary judgment can be upheld without reaching the court's alternative basis for dismissing the action.

IV

The defendants are entitled to qualified immunity for their acts in interviewing the children because Michaels did not demonstrate a violation of her own constitutional rights. Ms. Sencer-McArdle is entitled to absolute immunity for presenting the children's testimony against Michaels before the grand jury and at trial. We therefore AFFIRM the order granting the defendants' motion for summary judgment and dismissing Michaels's federal claims.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-5486

MARGARET KELLY MICHAELS

Appellant

v.

STATE OF NEW JERSEY; ATTORNEY GENERAL'S OFFICE; COUNTY OF ESSEX; ESSEX COUNTY PROSECUTOR; GEORGE L. SCHNEIDER, ESQ.; HERBERT TATE, ESQ.; JOHN MASTROANGELO; JOHN NOONAN; GLENN GOLDBERG, ESQ.; SARAH SPENCER-MCARDLE; EILEEN C. TREACY, M.A.; THE ESSEX COUNTY POLICE DEPARTMENT; NEWARK POLICE DEPARTMENT; DIVISION OF YOUTH AND FAMILY SERVICES; LOUIS FONNELARAS; SUSAN ESQUILLAN; "JOHN DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "JOSEPH DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "JAMES DOES"; "JANE DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); "HARRY DOES", 1 THROUGH 20 (FICTITIOUS PERSONS); GEORGE MCGRATH

SUSAN ESQUILLAN

Defendant/Third-Party Plaintiff

v.

THE HEALTH CARE INSURANCE COMPANY

Third-Party Defendant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 96-03557)
District Judge: Honorable Maryanne Trump Barry

Present: Mansmann and Greenberg, *Circuit Judges*, and Alarcon, *Senior Circuit Judge**

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on March 21, 2000.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered May 26, 1999, be, and the same is hereby affirmed. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marced M. Waldron
Acting Clerk

Dated: June 5, 2000

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* The Honorable Arthur L. Alarcon, Senior Circuit Judge for the United States Court of Appeals for the Ninth Circuit, sitting by designation.